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European Commission
Brussels

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[705]

IDW's comments on the Commission's Draft Delegated Regulation amending Delegated Regulation (EU) 2023/2772 as regards the simplification of certain sustainability reporting standards (Ares(2026)4623964 and Annex)

Dear Madam or Sir,

We thank you for the opportunity to comment on the European Commission's Draft Delegated Regulation amending Delegated Regulation (EU) 2023/2772 as regards the simplification of certain sustainability reporting standards (hereinafter: "Draft Delegated Act").

The Institut der Wirtschaftsprüfer in Deutschland e.V. [Institute of Public Auditors in Germany, Incorporated Association] (IDW) is a privately run organisation established to serve the interests of its members who comprise both individual Wirtschaftsprüfer [German Public Auditors] and Wirtschaftsprüfungsgesellschaften [German Public Audit firms]. The IDW represents approximately 80% of all German Public Auditors. The auditing profession plays an important role in the green transformation by supporting companies in the implementation of ESG initiatives and by providing high-quality assurance services on sustainability reporting. Accordingly, the auditing profession has a strong interest in closely following ongoing developments in this context.

GESCHÄFTSFÜHRENDER VORSTAND:
Melanie Sack, WP StB, Sprecherin
des Vorstands;
Dr. Torsten Moser, WP;
Dr. Daniel P. Siegel, WP StB

Amtsgericht Düsseldorf
Vereinsregister VR 3850

We welcome the public consultation on the Draft Delegated Act as a further step towards establishing revised rules for sustainability reporting. In our view, the **timely completion** of the revision initiated by the European Commission's "Omnibus I Package" **is essential to ensure the acceptance of sustainability reporting**, establish a stable legal framework, and thus provide clarity regarding the reporting requirements.

We appreciate the European Commission's efforts to reduce reporting burdens. It is worth noting that the **Draft Delegated Act is significantly streamlined and more principles-based than the version adopted as Delegated Regulation (EU) 2023/2772**, while essentially retaining key disclosure requirements. By removing various redundancies and reducing the granularity of the required data points, the Draft Delegated Act is **significantly more manageable**.

Nevertheless, we believe that further clarification is still needed to create legal certainty and further reduce the reporting burden. Please find our comments in the annex to this letter.

We trust that you will find our comments helpful. We would be pleased to answer any questions you may have and would welcome the opportunity to meet with you to discuss our views.

Yours sincerely

Sack Siegel

Annex

Annex

I. Fair presentation

We welcome the clarification in ESRS 1.AR 6, that "fair presentation" refers to the sustainability statement taken as a whole and requires that the sustainability statement, as a whole, provides fair presentation of the entity's material impacts, risks and opportunities. A well-designed fair presentation framework can strengthen the value of sustainability reporting.

Requiring fair presentation also implies that the company needs to "stand back" to determine whether additional entity-specific disclosures beyond those explicitly required by the ESRS are needed to achieve fair presentation.

This is well understood for financial reporting under IFRS Accounting Standards and sustainability reporting under ISSB standards. These standards focus on financial materiality because they are directed primarily at users such as investors and creditors seeking to make economic decisions.

In contrast, given the application of double materiality in the ESRS, such a "stand back" could be construed by any potential users as implying that any of their specific needs must be addressed. For this reason, fair presentation in relation to impact materiality should not imply that the company needs to "stand back" to identify additional users or additional disclosures for such users beyond those that had been identified through an appropriate double materiality assessment process. Otherwise, there would be no basis for identifying such users and disclosures, which could result in any disclosures sought by any users becoming relevant. It is therefore important that the ESRS clarify that fair presentation of ESRS reporting – and in particular the fair presentation of information on the basis of impact materiality – depends upon an appropriate double materiality assessment and does not require identifying users and disclosures for such users beyond the outcome of that assessment. Rather, it concerns the fair presentation of disclosures for users that have been identified by the double materiality assessment.

II. Policies and actions for prevention, mitigation and remediation and positive impacts

In the context of conducting the double materiality assessment, the question of whether, and if so how, policies and actions relating to prevention, mitigation and remediation may be taken into account under the currently applicable first set of the ESRS gives rise to considerable legal uncertainty.

Against this background, we welcome the fact that the Draft Delegated Act has incorporated additions regarding the consideration of such measures (ESRS 1.43). However, in our view, further adjustments are required to ensure a uniform, comparable and, as far as possible, legally clear application of these additions. For instance, the wording regarding potential negative impacts – "can reasonably be assumed to effectively reduce the severity or likelihood" (ESRS 1.43 b)) – establishes an unclear criterion, namely the assumption of the effectiveness of policies and actions, for consideration in the materiality assessment. We suggest establishing a clear criterion for the consideration of such policies and actions. This would not only facilitate the application of this new provision but also help avoid expectation gaps regarding the documentation of assumptions and the assessment of the effectiveness of the policies and actions. Furthermore, it should be clarified that the general provisions for the double materiality assessment as the basis for sustainability reporting (i.e. ESRS 1.37 regarding thresholds meaning that policies and actions have to reduce severity and likelihood below the threshold for inclusion of IROs in the sustainability reporting in order to allow for application of ESRS 1.43 b)) still apply.

Furthermore, we believe that clarification is needed regarding ESRS 1.43 c). The wording "the information about impacts and how the undertaking manages them through policies and actions may be decision-useful to users, irrespective of how effectively the undertaking manages them or irrespective of how effectively the corresponding topics are regulated. In these cases, the materiality assessment needs to take this into account" could lead to the conclusion that a "gross" assessment of impacts – without considering such policies and actions – should be carried out. This would be contrary to the principle now reflected in the Draft Delegated Act that certain preventive, mitigating and remedial policies and actions may be taken into account. As the proposed requirement would have significant implications for reporting, we believe there is a need for clarification regarding the circumstances in which ESRS 1.43 c) has to be applied, whether ESRS 1.43 c) requires an undertaking to adjust its double materiality assessment, if disclosures are to be made and what the content of these disclosures should be.

We also welcome the addition of provisions regarding the consideration of positive impacts (ESRS 1.44). However, in addition to the new provisions on the consideration of positive impacts in the double materiality assessment, we believe that clear rules are also needed to distinguish positive impacts from the policies and actions discussed above. Only clear, principle-based criteria for determining what should be considered in the double materiality assessment can ensure legal certainty in the application of the provisions.

III. Reporting boundaries

Defining the scope of sustainability reporting, in particular distinguishing between a company's own operations and the upstream and downstream value chain, is a key step that may have significant implications for sustainability reporting.

It is therefore welcomed that various adjustments have been incorporated into the Draft Delegated Act regarding the delineation of the reporting companies' own operations, for example concerning the fundamental scope or the treatment of leased assets (ESRS 1.71). However, to ensure consistent, comparable and, as far as possible, legally clear application of these adjustments, we see the need for some specific amendments. For instance, unclear wording such as "usually" (ESRS 1.61) should be avoided. Furthermore, open-ended wording such as "depends on the provisions of the lease contract" (ESRS 1.71) should be avoided or clarified.

We also welcome that the concept of operational control for reporting GHG emissions is now phrased as an option that undertakings can choose (ESRS E1.AR19). However, the Draft Delegated Act also allows undertakings to use the equity share approach as an alternative. To our knowledge, the GHGP is considering deleting the equity share approach, this option might therefore harm future interoperability.

IV. Anticipated financial effects

The structure of the disclosure requirements regarding anticipated financial effects is a key point of discussion in the revision of the ESRS, as reflected in the options put forward by EFRAG for discussion as part of the interim consultation on the amended ESRS Exposure Draft.

Regarding the Draft Delegated Act, we welcome the proposed quite pragmatic approach to quantify anticipated financial effects, as we believe this disclosure is highly relevant. However, we see a need for further clarification to ensure consistent, comparable and as far as possible, legally clear application of these amended requirements.

Generally, we welcome the further alignment of the wording of the Draft Delegated Act with the ISSB standards regarding the requirement to quantify anticipated financial effects (e.g. ESRS 2.29). However, in our view, there are still unnecessary differences in wording between the respective standards. We recommend further harmonization through the verbatim adoption of the wording used in the ISSB standards where possible.

With regard to the topic-specific disclosures of anticipated financial effects related to climate change, the proposed provisions require the disclosure of physical risks before taking adaptation actions into account ("before considering climate change adaptation actions") at their carrying amount (ESRS E1.39 a)). In our view, these requirements may create additional work for reporting entities, as any adaptation actions included in the carrying amount could require potentially time-consuming adjustments. Against this background, we suggest that the option should be provided to disclose the anticipated financial effects from material transition risks with or without taking mitigation actions into account (ESRS E1.AR 30) should also be extended to the disclosure of anticipated financial effects arising from physical risks.

We welcome the clarification provided by ESRS 2.AR17, that reporting on anticipated financial effects is likely to involve the use of estimates and that the revision of reported anticipated financial effects in later years because of new data does not necessarily imply that there has been a reporting error.

V. References to other sources

Both the ESRS as currently applicable and the Draft Delegated Act refer to other sources that do not have comparable legal standing. The relationship between the provisions of the ESRS and those of these other sources, as well as the treatment of conflicting provisions or other matters of doubt in terms of a hierarchy of norms, gives rise to considerable legal uncertainty under the first set of ESRS currently in force.

In this context we welcome the fact that the Draft Delegated Act includes additional provisions in this regard, such as the clarification that "In all cases, the requirements of ESRS take precedence over the above-mentioned GHG accounting standards (e.g., regarding reporting boundaries)" (ESRS E1.AR 20). However, given the existing legal uncertainty, we see a further urgent need for clarification regarding references to other sources. For instance, in the Draft Delegated act the reference to these sources is phrased as "shall consider" (ESRS 1.18), which is defined as "is expected to take into account *or* to use" and still leaves room for interpretation. Despite the aforementioned additions in the Draft Delegated Act uncertainty nevertheless remains regarding the binding effect of provisions in the sources (including options or other simplifications) for which there is no corresponding provision in the ESRS. Furthermore, the resolution of conflicts between individual sources (e.g., the relationship between the GHGP Scope 3 Standard and the PCAF Standard) remains unclear. We therefore recommend that appropriate clarifications be provided.

We also see the need to establish rules regarding the incorporation of updates to the other sources in the ESRS. As already stated above, the GHGP rules are currently undergoing amendments, and the Land Sector and Removals (LSR) Standard will take effect on January 1, 2027. The way the Draft Delegated Act currently refers to other sources does not make it clear whether the LSR Standard will have to be taken into account. The same applies to references to PCAF.

VI. Interoperability with ISSB Standards

We welcome that the Draft Delegated Act has achieved significant alignment with the ISSB Standards using consistent terminology and concepts. However, we would like to point out that, even for concepts that appear to be identical, the Draft Delegated Act uses different wording to the ISSB Standards. The use of differing wording to deal with the same concepts leads to unnecessary interpretation effort on the part of reporting companies and sustainability assurance practitioners, as differing wording is often taken to signal differences in the underlying concepts. Therefore, the same wording should be used in cases where the same concepts are meant.

Furthermore, we would like to suggest that stronger consideration be given to the broader goal of ensuring that reporting in accordance with the ESRS will in general be regarded as ISSB-compliant reporting.

VII. Information from prior periods

All first-time ESRS reporters should be exempted from disclosing prior-year comparative information. This should also apply to wave-one-undertakings whose first reporting year is the financial year 2026.

We appreciate the clarifications regarding corrections of material prior period reporting errors in ESRS 1.98 et seq. We would welcome further clarification that not all prior period reporting errors are material prior period reporting errors subject to correction.